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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:**

B-215084

**DATE:**

September 24, 1984

**MATTER OF:**

R.A. Miller Industries, Inc.

**DIGEST:**

In "brand name or equal" procurement, bid based on allegedly "equal" product is nonresponsive where descriptive information submitted with bid does not show "equal" product's conformity with brand name product's salient characteristics.

R.A. Miller Industries, Inc. (Miller), protests its failure to receive the contract awarded under Federal Aviation Administration (FAA) invitation for bids (IFB) No. DTFA01-83-B-27397, a "brand name or equal" procurement of "VHF/UHF omni-directional" antennas. Miller's low bid was rejected as nonresponsive because the descriptive information submitted by Miller to describe the antennas it was offering as "equals" was determined to be insufficient to permit a conclusion that the antennas met some of the brand name product's salient characteristics which were listed in the invitation. Also, FAA states that Miller's information showed certain other salient characteristics were not met.

We deny the protest.

The IFB contained the following pertinent provision:

"ARTICLE II - BRAND NAME OR EQUAL

. . . . .

"C. 1. . . . To insure that sufficient information is available for evaluation [of an "equal" bid] the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to:

"a. determine whether the product offered meets the salient characteristics requirement of the invitation for bids; and,

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"b. establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award."

Pursuant to this clause, the IFB contained a list of the brand name's salient characteristics which had to be met by "equal" bidders. The FAA states that the descriptive material submitted with the Miller bid showed the following deviations and omissions as regards the salient characteristics:

"Each of Miller's drawings indicates the azimuth pattern as 'omni +ldb' where the IFB salient characteristics are 'omni-dir. ±ldb.' It is unclear exactly what Miller proposes to furnish because Miller has expressed a constant radiation pattern (no tolerance). It is well-known that all radiation patterns are not constant; thus, the salient characteristics requirement for omni-dir. and an allowance of ±ldb departure from a true circle.

. . . . .

"Antenna insulation resistance was not addressed. Therefore, a determination could not be made that Miller intends to fulfill this [salient] requirement.

"The Miller drawings indicate only a '0-100% humidity' and the salient characteristics require a relative humidity of 0-100%, including sea coast salt spray. It cannot be determined whether Miller is intending to fulfill the requirement for the sea coast salt spray.

"The Miller mounting specifications for dual antennas indicate a capability for mounting the antennas only on a 2 1/2" IPS pipe. The IFB salient characteristics require mounting capability on either 1.660" or 2.875" OD pipe for all antennas.

"The Miller specifications indicate that the radome will be a fiberglass tube, and the IFB salient characteristics require filament wound fiberglass.

"The Miller specifications indicate that grounding will be through the mounting hardware, and the IFB salient characteristics require the grounding to be through an external ground lug for AWG #6 wire.

"The Miller specifications indicate that the power capability will be 50 watts maximum and the IFB salient characteristics require a power capability of 50 watts minimum."

Consequently, the Miller bid was rejected.

In protest of this rejection, Miller notes that it stated in the cover letter to its bid that detailed drawings of the components of the bid were in the bidder's files for observation and that "our antennas are equal to all of the electrical and mechanical characteristics" of the brand name antennas listed in the invitation.

It is the position of Miller that any problems regarding its antennas and their compliance with the salient characteristics could have been resolved through clarifications after bid opening and that a preaward survey would have shown its antennas capable of compliance with the salient characteristics. Further, Miller states that although its literature listed a power capability of 50 watts maximum, this was a typographical error and should have been 50 watts minimum. The latter wattage, Miller asserts, is the industry standard in any event. The 2-1/2-inch IPS pipe designation, Miller contends, satisfies the 1.660-inch or 2.875-inch requirement for mounting pipe. The fiberglass tube was required to be filament wound and was referred to by Miller as fiberglass--a reference which should have been acceptable. No mention was made of salt spray or of antenna insulation quality since these requirements would have been tested and proven incident to production, a procedure allegedly in compliance with industry practice.

To be responsive to a brand name or equal invitation, a bid offering an equal product must contain sufficient descriptive information to permit the contracting agency to assess whether the equal product meets each salient characteristic of the brand name product(s) listed in the invitation. This assessment may also be based on product information otherwise publicly available prior to bid opening. Vista Scientific Corporation, B-210416, Apr. 5, 1983, 83-1 C.P.D. ¶ 365. Consequently, it is not enough that the bidder believes its product is "equal" or makes a blanket

statement in the bid that all salient characteristics are met by its "equal" product(s). While information was allegedly in the possession of Miller in the form of internal/design drawings, Miller does not contend that this information was publicly available prior to bid opening.

While Miller may be able to furnish antennas which are capable of meeting all of the salient characteristics, as it contends, the fact remains that the invitation required certain specified evidence of equality to be presented at the time of bid opening (or be publicly available prior to then), not evidence based upon a later preaward survey or actual production of the antennas.

As noted above, Miller takes issue with the FAA's analysis of the company's product in regard to some of the salient characteristics. Nevertheless, Miller has not questioned the FAA's analysis of Miller's bid concerning the salient characteristics involving "azimuth pattern" and "grounding." FAA's analysis shows that, at best, it is not clear that Miller's product meets these salient characteristics or the other salient characteristics which Miller claims it meets as a matter of industry standard or practice. We also consider at least one of Miller's objections--involving "mounting capability"--to be clearly erroneous. The mounting dimensions specified in the IFB were mounting on either 1.660 or 2.875 inches of "OD pipe"; these two dimensions were not stated as a range within which any mounting size would be acceptable. Consequently, Miller's offer of mounting on a 2-1/2-inch size OD pipe was clearly nonresponsive to this salient characteristic.

Therefore, Miller's bid was properly rejected. An allegedly "equal" bid is to be rejected under the above "Brand Name or Equal" clause if it does not show compliance with all the salient characteristics.

Accordingly, the protest is denied.

*Milton J. Fowler*  
for  
Comptroller General  
of the United States